



STATE OF CALIFORNIA
FAIR POLITICAL PRACTICES COMMISSION
428 J Street • Suite 620 • Sacramento, CA 95814-2329
(916) 322-5660 • Fax (916) 322-0886

April 13, 2015

Carol Harman
14033 Jasmine Ave
Poway, CA 92064

Re: Your Request for Advice
Our File No. A-15-064

Dear Ms. Harman:

This letter responds to your request for advice regarding your duties as a member of the Budget Review Committee for the City of Poway under the conflict of interest provisions of the Political Reform Act (the "Act").¹

Please note that we are only providing advice under the conflict of interest provisions of the Act and not under other general conflict of interest prohibitions such as common law conflict of interest or Section 1090.

QUESTION

Do the conflict of interest provisions of the Act prohibit you from being a member of the Poway Budget Review Committee by virtue of your employment with Agripost LLC?

CONCLUSION

The Act does not prohibit you from being employed by another entity such as a private business, firm, or nonprofit. However, you may not make a governmental decision that would affect your economic interests, including your employer.

FACTS

You are a member of the Budget Review Committee for the City of Poway. The purpose of the committee is to review the Annual Operating and Capital Improvement budget as proposed by the City Manager. After the review, a written report will be prepared which includes the findings for the City Council. Members of the Committee are required to file Form 700 under the City's conflict of interest code.

¹ The Political Reform Act is contained in Government Code Sections 81000 through 91014. All statutory references are to the Government Code, unless otherwise indicated. The regulations of the Fair Political Practices Commission are contained in Sections 18110 through 18997 of Title 2 of the California Code of Regulations. All regulatory references are to Title 2, Division 6 of the California Code of Regulations, unless otherwise indicated.

After being appointed to this committee by the Mayor, you accepted a position with Agripost LLC as Executive Vice President Public Affairs. In your position at Agripost, you will be making presentations to local City Councils about the new process for solid waste that Agripost is offering. You will be requesting only a MOU from the governments since the plants will be built using investors' funds. You will be paid by Agripost.

ANALYSIS

The Act *does not* prohibit a public employee from holding a public position while working as an employee of a private company. However, Section 87100 prohibits any public official from making, participating in making, or otherwise using his or her official position to influence a governmental decision in which the official knows or has reason to know he or she has a financial interest. Under your facts, you would have a potentially disqualifying interest in Agripost as a source of income (Section 87103(c)) and as your employer (business position under Section 87103(d).)

Foreseeability and Materiality: Regulation 18702.1 provides that a reasonably foreseeable financial effect² of a governmental decision on a business entity in which an official has a financial interest identified in Section 87103(a) or (d) is material whenever the business initiates the proceeding in which the governmental decision will be made by filing an application, claim, appeal, or request for other government action concerning the business entity. Seeking an MOU from the City of Poway on behalf of Agripost would result in a foreseeable and material financial effect on Agripost.

Making, participating in, and Influencing a decision: Since the decision will have a foreseeable and material financial effect on your interest (Agripost), you are prohibited from making or participating in making the decision. A public official "makes a governmental decision" when the official, acting within the authority of his or her office or position: (1) votes on a matter; (2) appoints a person; (3) obligates or commits his or her agency to any course of action; (4) enters into any contractual agreement on behalf of his or her agency; (5) determines not to act, unless such determination is made because of his or her financial interest. (Regulation 18704.1.)

A public official "participates in making a governmental decision" (as defined in Regulation 18704.2) when, acting within the authority of his or her position, the official: (a) negotiates, without significant substantive review, with a governmental entity or private person regarding a governmental decision referenced in Regulation 18704.6; or (b) advises or makes recommendations to the decisionmaker either directly or without significant intervening substantive review, by:

² A financial effect need not be likely to be considered reasonably foreseeable. In general, if the financial effect can be recognized as a realistic possibility and more than hypothetical or theoretical, it is reasonably foreseeable. If the financial result cannot be expected absent extraordinary circumstances not subject to the public official's control, it is not reasonably foreseeable.

(1) Conducting research or making any investigation which requires the exercise of judgment on the part of the official and the purpose of which is to influence a governmental decision referenced in Regulation 18704.6; or

(2) Preparing or presenting any report, analysis, or opinion, orally, or in writing, which requires the exercise of judgment on the part of the official and the purpose of which is to influence a governmental decision referenced in Regulation 18704.6.

You are also prohibited from influencing a decision of the City by contacting, or appearing before, or otherwise attempting to influence, any member, officer, employee, or consultant of the city.³ (Regulation 18704.3(a).)

If you have other questions on this matter, please contact me at (916) 322-5660.

Sincerely,

Hyla P. Wagner
General Counsel

By: John W. Wallace
Assistant General Counsel

JWW:jgl

³ Regulation 18704.3 also provides that the official is attempting to use his or her official position to influence the decision if, for the purpose of influencing the decision, the official acts or purports to act on behalf of, or as the representative of, his or her agency to any member, officer, employee or consultant of any other agency.